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BY ECF

Hon. Andrew L. Carter
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *E.F. et al. v. Adams, et al.*
Index No. 21 CV 11150 (ALC) (SN)

Dear Judge Carter,

I am an Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and attorney for the City Defendants in the case referenced above. I write jointly with counsel for the other parties, and pursuant to the Court's Order, set forth in its Opinion and Order dated March 1, 2022, to provide this status update.

As with the previous status letters, I have communicated by email with Elisa Hyman, Esq., and James Sanborn, Esq. two of Plaintiffs' attorneys, as well as Elyce Matthews, Esq., and Mark Ferguson, Esq., attorneys for the State Defendants, in drafting this letter. As noted, this letter is submitted jointly.

Defendants' Update

Regarding the progress of the implementation of the "OATH plan" (the plan by which impartial due process hearings in New York City for claims brought pursuant to the Individuals with Disabilities Education Act will be adjudicated by OATH, *i.e.* the Office of Administrative Trials and Hearings), OATH now has 25 hearing officers hired and onboard, 19 of whom have been certified by the State. 6 more hearing officers have accepted offers and are likely to begin work this month or in May. Of these 6 hearing officers, 2 are already State-certified. The remaining 10 hearing officers (4 onboard and 6 incoming) will undergo training to

obtain certification in May. Cases continue to be assigned to the OATH hearing officers who are already onboard and certified.

Regarding the related proceeding of *Gronbach et al. v. N.Y. State Education Department et al.*, Index No. 910574-2021 in the New York State Supreme Court in the County of Albany, there is no new information since our last status letter. The parties are still waiting for a decision from the court on the City and State's cross-motions to dismiss and Petitioners' application for a preliminary injunction.

Regarding transcripts of pre-hearing conferences, an issue highlighted by Plaintiffs below, City Defendants note that State regulations do not require a verbatim transcript of pre-hearing conferences. 8 N.Y.C.R.R. § 200.5(j)(3)(xi) (providing that a "transcript *or written summary* of [a] prehearing conference" shall be prepared) (emphasis supplied).

Plaintiffs' Update

OATH IHOs Are Not Required to Issue Transcripts of Certain Proceedings

Under 20 U.S.C. § 1415(h)(3), the IDEA guarantees parties "the right to a written, or, at the option of the parents, electronic verbatim record" of the hearing. It has come to our attention that under the policy of OATH, the impartial hearing officers ("IHOs") have been given discretion whether to give parties a copy of the verbatim transcript of the "pre-hearing" conference which can cover a range of procedural and substantive issues, as indicated in our prior letter. The IDEA does not contemplate a "pre-hearing" procedure, although one is not prohibited. However, from Plaintiffs' perspective, whether the conference is called a "pre-hearing" conference or other type of conference, it is part of the hearing. Any procedural or substantive issues addressed with an IHO, and statements made by the IHO and parties are considered part of the hearing record when a case goes on appeal to the State Review Officer and to court. As such, parents and the DOE are entitled to a verbatim transcript. When hearings are held by the DOE, the parties receive a transcript of the pre-hearing conferences. It is Plaintiffs' position that the Defendants must ensure that parties have access to verbatim transcripts via OATH hearings. It is Plaintiffs' view that the IDEA trumps state regulations and laws pursuant to the Supremacy Clause.

The parties jointly thank the Court for its consideration of this matter.

Respectfully submitted,

s/

Andrew J. Rauchberg
Assistant Corporation Counsel

cc: All counsel of record